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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

KARINA ABANTO et al.,

Plaintiffs and Appellants,

v.

THRESIAMMA MATHEW et al.,

Defendants and Respondents.

B284293

(Los Angeles County
Super. Ct. No. BC620766)

APPEAL from a judgment and order of the Superior Court of Los Angeles County. Mel Red Recana, Judge. Reversed.

Mastin Law Firm and Gary E. Mastin for Plaintiffs and Appellants.

Michael P. Rubin & Associates, Michael P. Rubin, Jared Xu; and S. Martin Keleti for Defendants and Respondents.

Plaintiffs and appellants Karina Abanto and Renato Uvas challenge the trial court's judgment of dismissal and order denying their request for relief pursuant to Code of Civil Procedure section 473 (section 473).

We agree with their argument that the trial court abused its discretion in denying their motion for leave to file a second amended complaint one day later than ordered by the trial court. Accordingly, we reverse the trial court's order denying plaintiffs' section 473 motion and the judgment of dismissal entered against them.

FACTUAL AND PROCEDURAL BACKGROUND

On May 31, 2016, plaintiffs filed a complaint for damages against defendants Thresiamma Mathew, Remy's HT RN Care, LLC, and Remy's Garden, Inc., alleging that defendants committed various violations of the California Labor Code. Plaintiffs filed a first amended complaint on July 8, 2016.

On August 18, 2016, defendants filed a demurrer and motion to strike portions of the first amended complaint. Plaintiffs opposed the demurrer.

On January 24, 2017, the trial court overruled the demurrer in its entirety and granted defendants' motion to strike. Plaintiffs were granted 20 days leave (or until February 14, 2017) to file a second amended complaint.

On February 15, 2017, one day late, plaintiffs filed their second amended complaint. Two days later, on February 17, 2017, plaintiffs filed a third amended complaint.¹

¹ Plaintiffs concede that they improperly filed a third amended complaint without leave of court. They contend that the second amended complaint is the operative pleading.

On March 21, 2017, defendants filed a motion to dismiss the third amended complaint on the grounds that plaintiffs had filed the second amended complaint too late and that plaintiffs had never been granted leave to file the third amended complaint.

Meanwhile, plaintiffs filed a motion pursuant to section 473 for leave to file the second amended complaint one day late. They argued that “[d]ue to inadvertence and oversight, . . . former co-counsel . . . miscalculated the due date” and filed and served the second amended complaint one day late. In support of the section 473 motion, plaintiffs provided a declaration from their former attorney, Rosa Kwong (Kwong), attesting to her error. Unfortunately, Kwong neglected to sign her supporting declaration.

Attached to the section 473 motion was a conformed copy of the face page of the previously-filed second amended complaint.

On May 31, 2017, the trial court heard both motions. Following oral argument, it granted defendants’ motion to dismiss and denied plaintiffs’ section 473 motion. It based its ruling on the facts that (1) the supporting declaration of Kwong was unsigned, and (2) a complete copy of the second amended complaint was not attached to the section 473 motion; only a copy of the conformed first page of the previously-filed second amended complaint was attached.

Plaintiffs filed a motion for reconsideration of the order denying their section 473 motion. In support, they provided a declaration from Kwong, who explained that her failure to sign her prior declaration was inadvertent.

Plaintiffs’ motion for reconsideration was denied.

A judgment of dismissal was entered, and this timely appeal ensued

DISCUSSION

I. Standard of review

As the parties agree, we review the trial court's order denying a section 473 motion for abuse of discretion.

““A motion seeking . . . relief [under section 473] lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. [Citations.] However, the trial court's discretion is not unlimited and must be “exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” [Citations.] [¶] [Code of Civil Procedure] section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations ‘very slight evidence will be required to justify a court in setting aside the default.’ [Citations.] [¶] Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying [Code of Civil Procedure] section 473 must be resolved in favor of the party seeking relief from default [Citations]. Therefore, a trial court order denying relief is scrutinized more carefully than an order permitting trial on the merits. [Citations.]” [Citations.]” (*Miller v. City of Hermosa Beach* (1993) 13 Cal.App.4th 1118, 1136.)

II. The trial court abused its discretion

We conclude that the trial court abused its discretion in denying plaintiffs' leave to file their second amended complaint one day late. There is no evidence that defendants were in any

way prejudiced by plaintiffs' counsel's calendaring error that resulted in the one-day late filing.

While plaintiffs' counsel may have failed to sign her supporting declaration, it appears that that error was inadvertent. And, there is no evidence that that error was ever called to her attention. (Code Civ. Proc., § 128.7.) Had the error been pointed out to her earlier, based upon the statements in her declaration filed in support of plaintiffs' motion for reconsideration, we presume that Kwong would have immediately cured the mistake by signing her declaration.

Moreover, it is true that the entire second amended complaint was not attached to the section 473 motion, as statutorily required. But we cannot ignore the limited purpose of this statutory requirement—to show the “delinquent party[’s] . . . good faith and readiness to at once” proceed in the litigation. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 933.) Given that the entire pleading was already on file, plaintiffs' “substantial compliance” by attaching a conformed copy of the face page of the second amended complaint satisfied this statutory requirement. (See *Carmel, Ltd. v. Tavoussi* (2009) 175 Cal.App.4th 393, 402.)

Under these circumstances, we readily conclude that the trial court abused its discretion in denying plaintiffs' section 473 motion. It follows that the trial should have denied defendants' motion to dismiss.

DISPOSITION

The judgment of dismissal and order denying plaintiffs' section 473 motion are reversed. Plaintiffs are entitled to costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT